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C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 000489

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DEPARTMENT FOR USUN/W, BURNS, STEINBERG, MILLS. PLEASE PASS  
TO NSC FOR SHAPIRO AND KUMAR

E.O. 12958: DECL: 05/11/2019  
TAGS: [PREL](#) [UNSC](#) [KWBG](#) [KPAL](#) [IS](#) [LY](#)  
SUBJECT: SECURITY COUNCIL AND GAZA BOARD OF INQUIRY: LIBYA  
PRESSES FOR COUNCIL DISCUSSION AND CIRCULATES DRAFT  
RESOLUTION

REF: USUN NEW YORK 468

Classified By: Ambassador Susan E. Rice for reasons 1.4 (b) and (d).

11. (U) This is an action request. Please see para 10.

12. (C) Summary: The Libyan delegation circulated to Council members, after the May 11 Ministerial meeting on the Middle East, a draft resolution pursuing the findings of the Gaza Board of Inquiry and scheduled an experts meeting to discuss the text on May 13. Separately, the Libyans are pressing the Russian Council Presidency to schedule Council consultations on the Secretary-General's letter and summary of the Board of Inquiry's report and are threatening to resort to a formal meeting request if consultations are not scheduled before the Council's trip to Africa departs on May 14. USUN will aim to lobby Council delegations not to support the Libyan draft text in hopes of finding six other votes to block it, without having to resort to a U.S. veto, but a veto may ultimately be the only way to thwart the resolution. USUN request Department guidance on the timing for Council consultations on the Board of Inquiry report, either May 13 or 14 or after May 18. End summary.

Libyans circulate draft resolution  
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13. (C) The Libyan delegation circulated, after the Middle East ministerial meeting on May 11, a draft resolution pursuing the findings of the Board of Inquiry into the incidents involving eight UN sites and one UN convoy in Gaza between December 27, 2008 and January 19, 2009. The Libyan delegation has also scheduled an experts meeting to discuss the draft text on Wednesday, May 13 at 10 a.m. (Note: USUN e-mailed the text of the draft resolution to IO/UNP. End note.)

14. (C) The format of the Libyan draft resolution -- and past practice -- suggests that it may have been drafted for General Assembly action if the Council blocks action on it. Arab League Permanent Observer Mahmassani told Ambassador Wolff that the Arab Group was also finalizing a draft General Assembly resolution that would seek, under Article 96 of the UN Charter, an advisory opinion from the International Court of Justice on the legality of Israel's actions in Gaza during the conflict.

Libyans press for Council  
discussion before May 15  
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15. (C) Separately, the Libyan delegation continues to press the Russian Council Presidency to schedule Council consultations to discuss the Secretary-General's letter to the Council and his summary of the Board of Inquiry's report.

According to the Russian delegation, the Libyans are pressing for consultations to be scheduled before the Council departs on its Mission to Africa on May 14 or threaten to resort to Rule Two of the Council's Provisional Rules of Procedure and request a formal meeting of the Council on the matter under the agenda item "Protection of Civilians." (Note: The President must call a meeting of the Council at the request of a member of the Council, according to Rule Two, but Council members would have to vote on the agenda for said meeting and other Council members could block the holding of said meeting with seven votes against the agenda. End note.) USUN believes we would not be able to gather six other votes to reject the agenda of a formal meeting of the Council on this subject if the United States was perceived to be blocking consultations. Russian Perm Rep Churkin told Ambassador Rice that, based on their bilateral consultations, 13 of 15 Council members favor Council consultations on this matter.

#### Options on Draft Resolution

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¶6. (C) Any Council member can circulate texts for Council consideration and call consultations to discuss those texts. Though the Libyan text appears to be drafted to guarantee a U.S. veto, USUN believes it may be possible (though not likely) to gather six other Council members who do not think the Council should pursue this resolution draft. While most delegations are still seeking instructions from capitals, a few have indicated informally to us that they are not in favor of the current Libyan text.

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¶7. (C) The UK Mission is awaiting instructions, but the UK expert did note that Foreign Secretary Milliband had said in his Ministerial meeting statement that he looked to the Israeli government to investigate each of these incidents in light of the Inquiry's findings. The French experts told PolOff that France would prefer a resolution calling for an impartial investigation of "all allegations of violations of international humanitarian law," though he acknowledged that findings of violations of international humanitarian law were outside the scope of the Board's terms of reference. USUN plans to continue lobbying fellow Council members not to engage the Libyans on this draft resolution. If USUN is not able to secure the six other votes against or in abstention of this resolution, it can be blocked with a U.S. veto.

#### Options on Council Discussion

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¶8. (C) The Russian Council Presidency is seeking USUN's view on how to respond to the Libyan request for the Presidency to schedule consultations on the Board of Inquiry. We could request that the Russian Presidency push back consultations until after Israeli Prime Minister Netanyahu's visit to Washington on May 18. Consultations would then likely be scheduled after the Council Mission to Africa returns on May 21. However, if they postpone it for too long, the Libyans could resort to exercising Rule Two and calling earlier for a formal meeting of the Council.

¶9. (C) On the other hand, postponing consultations until after May 21 could leave discussion on this matter "hanging over" Netanyahu's Washington visit. USUN believes there may be benefit to getting this Council discussion scheduled and completed on May 13 or May 14, well before the Netanyahu visit. The longer we postpone this discussion, the more time delegations can spend developing their arguments on this issue. We can use the success of the Russian Ministerial meeting to help push back on negative approaches. Many delegations were very pleased with the U.S. statement on May 11 which stands in stark contrast to the tone of the Libyan draft resolution. We can press the Russians and others to help us push back on this negative effort to sour the peace

process atmosphere. We think it will be easier to temper criticism on the Board of Inquiry in advance of the upcoming visits to Washington and not during the visit schedule. Lastly, we are concerned about the optics of a successful Netanyahu visit to Washington followed by "messy" Security Council consultations on the Board of Inquiry. (Comment: Some of the other delegations' comments with regard to the draft resolution imply that they understand the sensitivity of this issue and want to be finished with it. End comment.) USUN thinks that the Russian Council Presidency will try to restrict the discussion to one single session during their Presidency in May.

#### Action request

¶10. (C) Action request: USUN understands the Department's current preference is for the Council to hold informal discussion in consultations on the Board of Inquiry report after May 18, but given the new information, USUN requests Department's guidance. USUN requests Department endorse its strategy not to engage on the Libyan draft resolution and to lobby other Council members not to support the Libyan text. End action request.  
Rice